



CITY OF ABERDEEN  
Washington  
Since 1884

## Request for Council Action

Date Action is Requested: April 24, 2024  
Subject: **Contract for Debt Collection Service with Armada**

### COMMITTEE:

- Finance  Public Works  
 Public Safety  Special Agenda Item

### TYPE OF ACTION REQUESTED:

- Ordinance No.  Resolution No.  
 Motion  Discussion  
 No Action - Information Only  Other:

### SUMMARY OF REQUEST:

#### POLICY IMPLICATIONS:

- This action is in accordance with current policies and procedures.  
 This action would require a new  policy  ordinance  resolution  other action from the Council.  
 This action requires a revision to  policy  ordinance  resolution  other.  
 Does not affect current policies and procedures.

#### FISCAL IMPACT:

See Contract.

#### BUDGETARY STATUS:

- Funds have already been authorized in this year's budget.  
 This is an extra-budget expenditure.  
 Funds will be requested for this action, if approved, in next year's budget.  
 This action will bring in additional revenue.  
 This action will require city staff time and/or labor.  
 This action has no budgetary implications.  
 This action will reduce expenditures.  
 Other:

#### BACKGROUND/RATIONALE:

The City of Aberdeen does not have a debt collection service to collect unpaid taxes, rates, fees and charges. Having a debt collection service is a standard practice for municipalities and is a missing tool for the city to collect on outstanding bills.

**RECOMMENDATION(S):**

Authorize the Mayor to enter into an agreement with Armada

**REVIEWED BY LEGAL:**       YES       NO       NOT REQUIRED

**ATTACHMENTS:**

- Professional Services Agreement with Armada Corp.

\_\_\_\_\_  
Staff Name

\_\_\_\_\_  
Committee Chair Name

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Committee Chair Signature

<b>This request aligns with the following City Council Values:</b>	
<input type="checkbox"/> Workforce Engagement & Development	<input type="checkbox"/> Vibrant, Safe & Healthy Community
<input type="checkbox"/> Economic Development	<input type="checkbox"/> Infrastructure Investment
<input checked="" type="checkbox"/> Fiscal Responsibility	<input type="checkbox"/> Communications & Outreach

## PROFESSIONAL SERVICES AGREEMENT

This Agreement (“Agreement”) is dated effective this \_\_\_\_ day of \_\_\_\_\_, 2024. This Agreement is by and between the City of Aberdeen, a Washington municipal corporation (“City”), and Armada Corp, a Washington corporation (“Contractor”), collectively known as the parties (“Parties”).

A. The City seeks the professional services of a skilled independent contractor capable of working without direct supervision in the capacity of a collecting past due accounts owed to the City and is familiar with the City’s municipal code, resolutions, regulations, and policies.

B. Contractor, by entering into the Agreement, represents that it has the requisite skills and experience necessary to perform and provide such services in a competent and professional manner.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, the Parties agree to the following terms and conditions:

**1. Services.**

1.1 Services. Contractor shall provide the services and equipment as specified pursuant to the terms more specifically described in “Exhibit A – Scope of Services,” attached hereto and incorporated by this reference (“Services”), in a manner consistent with the accepted practices and standards for other similar services, performed to the City’s satisfaction, within the time-period prescribed by the City and pursuant to the direction of the Mayor.

1.2 Compliance with Laws. Contractor shall comply with and perform the Services in accordance with all applicable federal, state, and City laws, including, but not limited to, the City of Aberdeen’s Municipal Code, and all other City resolutions, standards or policies, as now existing or hereafter adopted or amended.

1.3 Performance Standard. In the performance of services under this Agreement, Contractor and its employees or designees, promise to exercise the degree of skill and care required by customary and generally accepted practices, standards, and procedures adopted by Contractors’ rendering the same or similar type of service. All duties shall be performed in the manner consistent with those customary and generally accepted practices, and Contractor shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this Agreement.

**2. Term.** The term of this Agreement shall commence upon the effective date of this Agreement and shall expire on \_\_\_\_\_ 20\_\_\_\_, unless earlier terminated in accordance with Section 3.

**3. Termination.** Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause by the City upon prior written notice to Contractor.

If the Agreement is terminated after partial performance, the City will be obligated to pay only for that portion of the total work authorized under this Agreement that is satisfactorily completed. Contractor may terminate this Agreement, with cause, only upon sixty (60) days prior written notice to the City.

#### **4. Compensation.**

4.1 Total Compensation. Collection fees shall be assessed to each account pursuant to RCW 19.16.500 so that the City shall receive one hundred percent (100%) of the assigned amount collected. Interest shall be assessed on the accounts, beginning on the date assigned, at the rate of twelve percent (12%) per annum. Contractor shall retain the prescribed fees as delineated in Exhibit A along with any interest, recovered court costs, and attorney fees as compensation for services provided to the City. The City represents and warrants that it satisfies the requirements for adding collection fees as authorized by RCW 19.16.500. The City shall not waive any fees assessed to the debtor that are obligated to the Contractor under this Agreement. If collection fees are waived without the Contractor's expressed consent, Contractor shall be entitled to a commission of twenty-five percent (25%) of the amount paid by the debtor.

4.2 Method of Payment. Contractor will remit to the City the full principal amount collected by Contractor within thirty (30) days following the close of the month in which collected. Payments received on accounts shall be applied proportionately to the principal and fees so that City and Contractor are compensated concurrently. Payments shall contain an itemized breakdown of the accounts and monies collected, and any other services performed under this Agreement during the time covered by the payment. A fee of twelve percent (12%) per annum shall accrue for any late payments and shall be added to the following month's payment, accruing interest until paid in full.

4.3 Contractor Responsible for Taxes. Contractor shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

4.4 Reimbursement of Expenses. The City of Aberdeen is not liable to Contractor for any expenses paid or incurred by Contractor unless otherwise agreed in writing.

4.5 Compromises and Collection Costs. Contractor has no authority to and will not engage in compromise settlement arrangements without prior authorization from the City. The City shall have no responsibility for uncollected costs advanced by Contractor.

**5. Reporting.** Contractor shall provide an acknowledgement to the City immediately after accounts are assigned. The report will be provided by mail, facsimile transmission, or through Internet methods. Additionally, Contractor will provide City with progress reports showing all accounts assigned to Contractor as required by the City. The City may audit Contractor's records pertaining to accounts assigned for collection after providing five (5) days advance notice to Contractor.

**6. Contractor to Direct Work.** Contractor shall control and direct the performance of the work or project of Contractor pursuant to this Agreement, subject to the City of Aberdeen oversight. The City of Aberdeen reserves the right to inspect, review, and approve of the work or project of Contractor to assure that it has been completed as specified, before payment is considered final.

**7. Warranties.**

7.1 Contractor Warranty. Contractor warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Aberdeen by obtaining a City of Aberdeen business registration if required by municipal code.

7.2 City Warranty. City hereby warrants the enforceability of the accounts being assigned to Contractor and that the information regarding the accounts and amounts assigned has been verified for accuracy. The City shall restrict direct communication with consumers after assigning accounts to Contractor and will refer those consumer communications to the Contractor. After assignment, City agrees to provide material information, as necessary and available, that may support Contractor's efforts. Such communication may include, but not be limited to, verification of balances and other data, dispute responses, bankruptcy notifications and other pertinent documents. Furthermore, City affirms that the accounts referred to Contractor will not be placed with any other entity during the time they are assigned to Collector.

**8. Security and Damages.** Contractor shall be responsible for security of its equipment and assumes all risk of damage, theft or loss to Contractor's equipment and supplies occurring from any nature whatsoever. Additionally, Contractor shall be responsible for any maintenance costs and repair costs resulting from any damage or loss from any source whatsoever to its equipment or supplies. Contractor agrees that neither damage to or loss of its equipment shall be applied to or claimed against City property, City liability insurance or commission revenues owed to the City.

**9. Independent Contractor/Conflict of Interest.**

9.1 Independent Contractor. It is the intention and understanding of the Parties that Contractor shall be an independent contractor and that the City shall neither be liable for nor obligated to pay sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax, which may arise as an incident of employment. Contractor shall pay all income and other taxes as due. Industrial or any other insurance, which is purchased for the benefit of Contractor, shall not be deemed to convert this Agreement to an employment contract.

9.2 City's Right of Supervision and Inspection. Even though Contractor is an independent Contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof.

9.3 Work Performed at Contractor's Risk. Contractor shall take all precautions reasonably necessary and shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall utilize all protections reasonably necessary for that purpose. All work shall be done at Contractor's own risk, and Contractor shall be responsible for any loss or damage to materials, tools, or other articles used or held for use in connection with the work.

9.4 Conflict of Interest. It is recognized that Contractor may or will be performing professional services during the term for other parties and that the City is not the exclusive user of the Services Contractor will provide, provided, however, that such performance of other Services shall not conflict with or interfere with Contractor's ability to perform the Services. Contractor agrees to resolve any such conflicts of interest in favor of the City.

## **10. Indemnification.**

10.1 Contractor Indemnification. Contractor shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from claims, injuries, damages, losses or suits including attorney fees, arising out of, in connection with, or incident to any negligent or intentional acts, errors or omissions, or conduct of Contractor (or its employees, agents, representatives, subcontractors/ subconsultants) in performance of this Agreement, whether such claims sound in contract, tort, or other legal theory, except for injuries and damages caused by the sole negligence of the City. Contractor's duty to defend and indemnify pursuant to this Section 10 is not in any way limited to, or by the extent of, insurance obtained by, obtainable by, or required of Contractor. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Contractor and the City, its officers, officials, employees, and volunteers, Contractor's liability, including the duty and cost to defend, hereunder shall be only to the extent of Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of indemnification. This waiver has been mutually negotiated by the Parties. As used in this Section 10, "City" includes the City, the City officers, employees, agents, and representatives. If, and to the extent, Contractor employs or engages subcontractors or subconsultants then Contractor shall ensure that each such subcontractor and subconsultant (and subsequent tiers of subcontractors and subconsultants) shall expressly agree to defend and indemnify the City to the extent and on the same terms and conditions as Contractor pursuant to this Section 10.

10.2 Records Request. When the City provides Contractor with notice of a Public Records Request, Contractor agrees to save, hold harmless, indemnify and defend the City, its officers, agents, employees and elected officials from and against claims, lawsuits, fees, penalties and costs resulting from Contractor's violation of the Public Records Act RCW 42.56, or Contractor's failure to produce public records as required under the Public Records Act. Records shall be retained until all litigation, claims or audit findings have been resolved even though such litigation, claim or audit continues past any formal retention period imposed by Washington State Archives, grant or other applicable law or regulation.

10.3 Survival. The provisions of this Section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

**11. Discrimination Prohibited and Compliance with Equal Opportunity Legislation.** In all Contractor services, programs or activities, and all Contractor hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by Contractor or by Contractor's employees, agents, subcontractors or representatives against any person because of sex, age, (except minimum age and retirement provisions), race, color, creed, national origin, marital status, religion, sexual orientation or the presence of any disability, including sensory, mental, or physical handicaps, based upon a bona fide occupational qualification in relationship to hiring and employment. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of Contractor's breach, may result in ineligibility for further City agreements.

**12. Confidentiality.**

12.1 Safeguarding of Information. All information regarding the City obtained by Contractor in performance of this Agreement shall be considered confidential. Contractor shall safeguard all written information submitted by the City to Contractor in connection with the services performed by Contractor under this Agreement to at least the same extent as Contractor safeguards like information relating to its own business or profession. Breach of confidentiality by Contractor will be grounds for immediate termination.

12.2 Disclosure of Information. Contractor shall not, without the prior written consent of the City of Aberdeen, disclose to third parties information that is not otherwise subject to public disclosure unless:

- a. The information is known to Contractor prior to receiving the same directly or indirectly in connection with the work or project;
  - b. The information is in the public domain at the time of disclosure by Contractor;
- or
- c. The information is received by Contractor from a third party who does not have an obligation to keep the same confidential.

**13. Work Product and Ownership of Records and Documents.**

13.1 Return of Work Product. All originals and copies of work product, including records, files, documents, reports, plans, sketches, layouts, designs, design specifications,



computer disks, magnetic media or material which may be produced or modified by Contractor while performing the services shall belong to the City. At the termination or cancellation of this Agreement, all copies of any such work product remaining in the possession of Contractor shall be delivered to the City and shall become the property of the City. Files containing the written record of Contractor's services shall be delivered to the City.

13.2 Use of Work Product. The City acknowledges that the documents and records prepared by Contractor are prepared specific to the work or project described herein. If the City modifies or uses any of the documents for other projects or purposes without the written approval of Contractor, the City releases Contractor from all responsibility for any errors or omissions therein with respect to such modification or use.

#### **14. Insurance.**

14.1 Insurance Term. Contractor shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of work hereunder by Contractor, its agents, representatives, or employees. Contractor shall comply with the following conditions and procure and keep in force during the term of this Agreement, at Contractor's own cost and expense, the following policies of insurance with companies authorized to do business in the State of Washington, which are rated at least "A" or better and with a numerical rating of no less than seven (7), by A.M. Best Company and which are acceptable by the City. Contractor's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of Contractor to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

14.2 Minimum Scope of Insurance. Contractor shall obtain insurance of the types described below:

a. Commercial General Liability insurance shall be written at least as broad on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop-gap, independent contractors and personal injury and advertising injury. The City shall be named as an additional insured under Contractor's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

b. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

c. Professional Errors and Omissions Insurance. If both parties agree that the Services do not warrant Contractor providing Professional Errors and Omissions Insurance, Section 13.3.d may be stricken if this Section is initialed by both Parties: \_\_\_\_\_

14.3 Minimum Insurance Limits. Contractor shall maintain the following insurance limits:



a. Comprehensive General Liability. \$1,000,000 combined single limit per occurrence for bodily injury personal injury and property damage; \$2,000,000 general aggregate.

b. Workers' Compensation. Workers' compensation limits as required by the Workers' Compensation Act of Washington.

c. Professional Liability/Contractor's Errors and Omissions Liability. \$1,000,000 per claim and \$1,000,000 as an annual aggregate. Such coverage, with City approval, may be written on a claims-made basis. If the Professional Errors and Omissions Insurance is on a claims-made policy form, the retroactive date on the policy shall be the effective date of this Agreement or prior. The retroactive date of any subsequent renewal of such policy shall be the same as the original policy provided. The extended reporting or discovery period on a claims-made policy form shall not be less than 36 months following expiration of the policy. (This paragraph shall not apply if Section 13.2.d above is initialed.)

14.4 Notice of Cancellation. In the event that Contractor receives notice (written, electronic or otherwise) that any of the above required insurance coverage is being cancelled and/or terminated, Contractor shall immediately (within forty-eight (48) hours) provide written notification of such cancellation/ termination to the City.

14.5 Verification of Coverage. In signing this Agreement, Contractor is acknowledging and representing that required insurance is active and current. Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of Contractor before commencement of the work. Further, throughout the term of this Agreement, Contractor shall provide the City with proof of insurance upon request by the City.

14.6 Insurance Shall be Primary - Other Insurance Provision. Contractor's insurance coverage shall be primary insurance as respect to the City. Contractor's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain that they shall be primary insurance as respect to the City. Any Insurance, self-insurance, or self-insurance pool coverage maintained by the City shall be excess of Contractor's insurance and shall not contribute with it.

14.7 Claims-made Basis. Unless approved by the City all insurance policies shall be written on an "Occurrence" policy as opposed to a "Claims-made" policy.

14.8 Failure to Maintain Insurance. Failure on the part of Contractor to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to Contractor to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due Contractor from the City.

14.9 Full Availability of Contractor Limits. If Contractor maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of

Commercial General and Excess or Umbrella liability maintained by Contractor, irrespective of whether such limits maintained by Contractor are greater than those required by this contract or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by Contractor.

**15. Maintenance/Inspection of Records.**

15.1 Maintenance and Inspection. Contractor agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs and expenses allowable under this Agreement related to the performance of the Services and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement. If any litigation, claim or audit is commenced, Contractor shall cooperate with the City and assist in the production of all such documents.

15.2 Public Records. The Parties agree that this Agreement and records related to the performance of the Agreement are, with limited exception, public records subject to disclosure under the Public Records Act RCW 42.56. Contractor acknowledges that any record, document, work product or correspondence created by contractor may be subject to the Public Records Act. Further, in the event of a Public Records Request to the City, the City may provide Contractor with a copy of the Records Request and Contractor shall provide copies of any City records in Contractor's possession, necessary to fulfill that Public Records Request. If the Public Records Request is large Contractor will provide the City with an estimate of reasonable time needed to fulfill the records request.

For purposes of this agreement, records means every writing or record of every type and description, including electronically stored information (ESI), that is in the possession, control, or custody of Contractor, including, without limitation, any and all correspondences, contracts, agreements, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbings, recordings, visual displays, photographs, minutes of meetings, tabulations, computations, summaries, inventories, and writings regarding conferences, conversations or telephone conversations, and any and all other taped, recorded, written, printed or typed matters of any kind or description; every copy of the foregoing whether or not the original is in the possession, custody, or control of Contractor, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

“ESI” means any and all computer data or electronic recorded media of any kind, including “Native Files”, that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. City of Aberdeen Public Records Policy Page 6 of 57 ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint,

Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that Contractor may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops or any other electronic device that contractor uses in the performance of its work or services hereunder, including any personal devices used by Contractor or any sub-contractor at home. "Native files" are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

Contractor shall include this Section 15, "Maintenance/Inspection of Records", in every subcontract it enters into in relation to this Agreement and bind the sub-contractor to its terms, unless expressly agreed to otherwise in writing by the City prior to the execution of such subcontract. The "Maintenance/Inspection of Records" Section of the Agreement shall confer third party beneficiary status on the City.

**16. Non-Appropriation of Funds.** If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to make payments for Services or amounts incurred after the end of the current fiscal period, and this Agreement will terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

**17. Dispute Resolution.** All disputes or claims arising under this Agreement ("Disputes") shall be resolved as set forth in this Section 17.

**17.1 Informal Resolution.** In the event of a Dispute, a party shall notify the other party of the Dispute with as much detail as possible. The City of Aberdeen and Contractor shall use good faith efforts to resolve the Dispute within ten (10) business days after receipt of a Dispute notice. If the Parties' business representatives are unable to resolve the Dispute, or agree upon the appropriate corrective action to be taken, within such ten (10) business days, then either party may initiate mediation as a condition precedent to Formal Resolution. Pending resolution of the Dispute, both Parties will continue without delay to carry out all their respective responsibilities under this Agreement.

If such matter relates to or is the subject of a lien arising out of Contractor's services, Contractor may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by Formal Resolution.

If the Parties are unable to resolve the dispute through initial informal resolution above, the City and Contractor may endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the Parties mutually agree otherwise, shall be administered by the American Arbitration Association in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. Mediation shall proceed in advance of Formal Resolution.

The Parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the mediator is located, unless another location is

mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

17.2 Formal Resolution. If the Parties hereto are unable to resolve a dispute pursuant to the procedure set forth above, the method of dispute resolution shall be litigation in a court of competent jurisdiction. Venue for any action under this Agreement shall be in Grays Harbor County, Washington.

17.3 Injunctive Relief. Nothing contained in this Section shall limit or delay the right of either party to seek injunctive relief from a court of competent jurisdiction, whether or not such party has pursued informal resolution in accordance with this Section.

**18. Compliance with Grant Terms and Conditions**. Contractor shall comply with any and all conditions, terms and requirements of any federal, state or other grant that wholly or partially funds Contractor's work hereunder.

**19. General Provisions**.

19.1 Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose. All attachments and addendum are incorporated herein by this reference, and shall be a part of this Agreement.

19.2 Modification. No provisions of this Agreement may be amended, modified or an additional obligation assumed by either Party except by written agreement signed by the Parties.

19.3 Full Force and Effect. Any section or provision of this Agreement which is adjudicated invalid or illegal shall in no way affect or invalidate any other section or provision hereof and such other sections or provisions shall remain in full force and effect.

19.4 Subletting/Assignment. Neither Contractor nor the City shall have the right to sublet, transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other party.

19.5 Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective representatives, successors in interest, heirs and assigns.

19.6 Attorney Fees. In the event either party brings a lawsuit to enforce the terms of this Agreement, or arising from a breach of this Agreement, the prevailing party shall be entitled to its costs and attorneys' fees for bringing or defending against the action.

19.7 No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

19.8 Governing Law. This Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of Washington.

19.9 Authority. Each individual executing this Agreement on behalf of the City and Contractor represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of Contractor or the City.

19.10 Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received three (3) days after the date of mailing.

19.11 Performance. Time is of the essence of this Agreement in each and all of its provisions in which performance is a factor.

19.12 Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law or in equity.

19.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute the same instrument and, collectively, constitute the entire Agreement.

19.14 Captions. The respective captions of the Sections/Titles of this Agreement are inserted for convenience of the Parties for reference only and shall not be deemed to modify, explain, simplify, or aid in the interpretation of the provisions or otherwise affect any of the provisions of this Agreement.

19.15 No Third Party Beneficiary. It is the specific intent of the Parties, and all Parties agree, that this Agreement shall not confer third party beneficiary status on any non-party.

19.16 No Joint Venture. This Agreement does not create a partnership or joint venture, and in carrying out this Agreement, the Parties shall act in their individual capacities and not as agents, employees, or partners of one another.

19.17 Force Majeure. Notwithstanding any other provision of this Agreement, no party to the Agreement shall be deemed in default or breach of this Agreement or liable for any loss or damages or for any delay or failure in performance due to a cause beyond its reasonable control. The Parties shall promptly resume performance hereunder after the force majeure event has passed.

19.18 Survivability. The obligation of Contractor under all provisions of this Agreement, which may reasonably be interpreted or construed as surviving the completion, termination, or cancellation of this Agreement shall survive the completion, termination, or cancellation of this Agreement.

19.19 Contractor Payments. In the event Contractor fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, then the City shall have the right but not the obligation and Contractor authorizes the City to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. It is agreed that this provision shall apply to taxes and fees imposed by City ordinance. Any such payments shall be deducted from Contractor’s total compensation.

19.20 Facsimile Transmission. Facsimile transmission of any signed original agreement, and re-transmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, the Parties will confirm facsimile transmitted signatures by signing an original document.

19.21 Ambiguities. Each party and its counsel, if any, have participated fully in the review and revision of this Agreement. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in interpreting this Agreement. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any Party.

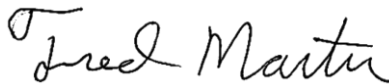
Executed on the dates written below.

ARMADA CORP.

CITY OF ABERDEEN

By:

By:



\_\_\_\_\_  
Fred Martin, Senior Account Executive

\_\_\_\_\_  
Douglas Orr, Mayor

6101 Capital Blvd, Suite C  
Tumwater, WA 98501

200 E Market  
Aberdeen, WA 98520

Date: 4-11-2024

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Hillary J. Evans, Corporation Counsel

**EXHIBIT A**  
**Scope of Services**





CITY OF ABERDEEN  
Washington  
Since 1884

## Request for Council Action

Date Action is Requested: April 24, 2024  
Subject: **Contract for Garbage and Recyclables Collections with LeMays**

### COMMITTEE:

- Finance  Public Works  
 Public Safety  Special Agenda Item

### TYPE OF ACTION REQUESTED:

- Ordinance No.  Resolution No.  
 Motion  Discussion  
 No Action - Information Only  Other:

### SUMMARY OF REQUEST:

### POLICY IMPLICATIONS:

- This action is in accordance with current policies and procedures.  
 This action would require a new  policy  ordinance  resolution  other action from the Council.  
 This action requires a revision to  policy  ordinance  resolution  other.  
 Does not affect current policies and procedures.

### FISCAL IMPACT:

See Contract.

### BUDGETARY STATUS:

- Funds have already been authorized in this year's budget.  
 This is an extra-budget expenditure.  
 Funds will be requested for this action, if approved, in next year's budget.  
 This action will bring in additional revenue.  
 This action will require city staff time and/or labor.  
 This action has no budgetary implications.  
 This action will reduce expenditures.  
 Other:

### BACKGROUND/RATIONALE:

The purpose of this contract is to provide for the collection of garbage and recyclables throughout the city. This contract outlines the terms and conditions in which Lemays will perform their duties.

The original contract expired in 2017 and the city had renewed the contract with amendments since then. The last amendment was made in 2020. This new contract:

- Allows for a clean contract with no amendments
- Will still include the same rates
- Has improved legal language
- Creates the potential for future yard waste
- Creates an adjustable spring clean up dollar amount
  - Acknowledges that the tip fee will increase in the future, but the amount the city will be reimbursed would be capped at \$55,000.
- Requires LeMays to monitor and evaluate customer service quality
- Includes a yearly community shred event
- Includes annual customer education
- Additional contracted services in Exhibit B

**RECOMMENDATION(S):**

Recommend authorizing the Mayor to sign the contract between the City of Aberdeen and Harold LeMay Enterprises, Incorporated.

**REVIEWED BY LEGAL:**       YES       NO       NOT REQUIRED

**ATTACHMENTS:**

- Contract for Garbage and Recyclable Waste Collection

\_\_\_\_\_  
Staff Name

\_\_\_\_\_  
Committee Chair Name

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Committee Chair Signature

<b>This request aligns with the following City Council Values:</b>	
<input type="checkbox"/> Workforce Engagement & Development	<input checked="" type="checkbox"/> Vibrant, Safe & Healthy Community
<input type="checkbox"/> Economic Development	<input type="checkbox"/> Infrastructure Investment
<input checked="" type="checkbox"/> Fiscal Responsibility	<input type="checkbox"/> Communications & Outreach

# CONTRACT FOR GARBAGE, RECYCLABLES AND YARD WASTE COLLECTION

## 1. Date and Parties

This Contract for Garbage, Recyclables and Yard Waste Collection (this “Contract”) is made and entered into as of January 1, 2025, by and between the City of Aberdeen, a Washington municipal corporation, hereinafter referred to as the “City”, and Harold LeMay Enterprises, Incorporated, a Washington corporation, hereinafter referred to as the “Contractor.”

WITNESSETH:

## 2. Purpose

The purpose of this Contract is to provide for the collection of Garbage, Recyclables, and Yard Waste throughout the City. The Contractor does hereby agree to provide these services for the City and its citizens and arrange for the disposal or recycling of such Garbage, Recyclables and Yard Waste upon the terms and conditions set forth herein.

## 3. Term

The City and the Contractor do mutually agree to perform the agreements and the commitments contained herein for a period of ten (10) years commencing January 1, 2025 and terminating December 31, 2034. Upon expiration of the initial term, or expiration of any extension period, the Contract shall automatically renew for an additional two (2) year period under the same terms and conditions, unless either party provides the other party with a written notice of its intent to terminate the Contract, twelve (12) months prior to the expiration of the then current term or extension period.

## 4. Definitions of Terms

“Aluminum Cans” shall mean cans and containers composed solely of aluminum and free of contents.

“Cardboard” shall mean moderately thick corrugated paperboard not contaminated by food, wax or foil coating or other similar contaminants.

“City” shall mean the City of Aberdeen or any official or agent representing the City in the discharge of duties.

“Contractor” means Harold LeMay Enterprises, Inc.

“Curbside” shall mean at the curb or within five (5) feet from the edge of the driving surface of the road or alley.

“Customer” shall mean all persons or businesses subscribing to the service for the collection and disposal of garbage, recyclables, and yard waste within the City.

“Customer Charge(s)” means the amount billed to the Customer for Garbage, Recycling and/or Yard Waste services as identified in Exhibit A.

“Dangerous Waste” shall mean dangerous or extremely hazardous waste defined by Chapter 173-303 WAC and regulated as dangerous waste or extremely Hazardous Waste by the Washington State Department of Ecology under the State Hazardous Waste Management Act, Chapter 70.105 RCW, or any other Washington State statute or regulation governing the treatment, storage, handling, or disposal of wastes and imposing special handling requirements similar to those required by Chapter 70.105 RCW.

“Drive-In” shall mean the charge for leaving the public road to provide service. There shall be no obstruction from overhanging branches and/or wires and adequate room for the collection vehicle to turn around. If the Customer requests drive-in service, the road surface shall be of such material as to withstand the weight of the collection vehicle; all maintenance and repairs shall be the Customer’s responsibility.

“Drop Box” shall mean a large-volume (20 cubic yards or greater) detachable container that can be pulled onto a collection vehicle mechanically and transported to a disposal site. This container must be placed on a hard, level surface.

“Excluded Waste” shall mean any Hazardous Waste, Dangerous Waste, Special Waste, radioactive, volatile, corrosive, highly flammable, explosive, biomedical, infectious, biohazardous, toxic or hazardous material as defined by applicable federal, state, or local laws or regulations.

“Front Load Container” shall mean a detachable metal container of various cubic yard sizes which is loaded directly by the truck by driving straight into the unit with the front-loading forks. This container must be placed on a hard, level surface.

“Garbage” shall mean all putrescible and non-putrescible solid and semisolid wastes. Garbage does not include: Excluded Waste, Dangerous Waste, sludge and septage; dangerous, Hazardous Waste, or medical infectious waste; automobile batteries; large appliances; rubber tires; and source separated Recyclables or Yard Waste.

“Glass” shall mean all jars and bottles of any color. Plate glass, window glass, mirrors, light bulbs, ceramics, or glass kitchen cookware are not included.

“Hazardous Waste” shall mean hazardous waste as defined by 40 C.F.R. Part 261 and regulated as Hazardous Waste by the United States Environmental Protection Agency under Subtitle C of the Resource Conservation and Recovery Act (“RCRA”) of 1976, 42 U.S.C. § 6901 et seq., as amended by the Hazardous and Solid Waste Amendments (“HSWA”) of 1984; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; or any other federal statute or regulation governing the treatment, storage, handling or disposal of waste imposing special handling or disposal requirements similar to those required by Subtitle C of RCRA.

“Mixed Paper” shall mean magazines, junk mail, cereal boxes, and cardboard. Mixed paper shall not include: tissue, paper towels, paper plates, plastic, and any other food-contaminated paper products.

“Multifamily Unit” shall mean any single-family dwelling complex of more than four units.

“Newspaper” shall include only newspaper and catalogs made of newsprint. All other paper is mixed paper with the exceptions noted above.

“Person” shall mean every person, firm, partnership, association, institution, or corporation in the City accumulating garbage and recyclables requiring collection. The term also means the occupant and/or the owner of each residential or commercial unit.

“Plastics” shall mean primarily polyethylene terephthalate (PET #1), such as soft drink, water, and salad dressing bottles; and high – density polyethylene (HDPE - #2) such as milk, shampoo, or laundry detergent bottles; but including any bottle with a neck narrower than its base.

“Rear Load Container” shall mean a detachable metal container with the size of one (1), one and one half (1-1/2) or two (2) cubic yards used for the collection and disposal of solid waste/garbage, attached by hand at the rear of the truck and dumped mechanically. This container must be placed on a hard, level surface.

“Recyclables” shall mean solid wastes that are separated for recycling or reuse, such as papers, plastics, and cans, that are defined as designated recyclables pursuant to Grays Harbor County Solid and Hazardous Waste Management Plan. Recyclables shall not include glass bottles, glassware, ceramics, light bulbs, batteries, aerosol cans, toxic product containers, plastic cups, plastic tubs, plastic lids, plastic bags, Styrofoam peanuts, Styrofoam containers, foil, chip bags, frozen food bags, pill bottles, juice boxes, metal coat hangers, food contaminated paper plates and napkins, and such other items as Contractor may reasonably designate from time to time upon City approval.

“Recyclables Cart” shall mean a large plastic wheeled cart having a minimum capacity of ninety (90) gallons, dumped mechanically to be provided by the Contractor.

“Recycling” means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

“Residential Unit” shall mean any single-family home and individual residences located in duplexes, triplexes, and fourplexes located in the City and served by this Contract.

“Rollout” shall mean a roll out or carry out service per can, cart or container from a distance greater than five (5) feet from the edge of the driving surface.

“Solid Waste” shall have the same meaning as that provided in the WUTC’s regulations, Ch. 480-70 WAC, as they now exist or are hereafter amended.

“Solid Waste Cart” shall mean a large plastic wheeled cart having a minimum capacity of thirty (30), sixty (60) or ninety (90) gallons, dumped mechanically to be provided by the Contractor.

“Subcontractor” shall mean any entity with whom the Contractor has an agreement to perform services as provided for in this Contract and as approved by the City.

“Special Waste” shall mean polychlorinated biphenyl (“PCB”) wastes, industrial process wastes, asbestos containing materials, petroleum contaminated soils, treated/de-characterized wastes, incinerator ash, medical wastes, demolition debris and other materials requiring special handling in accordance with applicable federal, state, county or local laws or regulations.

“Tin Cans” shall mean cans and containers composed of tin-plated steel, or bi-metals. Coat hangers or other scrap metals are not included.

“Yard Waste” shall mean weeds, leaves, grass, clippings of woody, as well as fleshy plants. Materials larger than four (4) feet in length and four (4) inches in diameter are excluded. This listing is subject to change pursuant to processor’s list of acceptable materials, including food waste.

“Yard Waste Cart” shall mean a large plastic wheeled cart having a minimum ninety (90)-gallon capacity.

5. Independent Contractor

The City and the Contractor intend that the City/Contractor relationship that is created by this Contract be one of independent contractor. Responsibility for the implementation of services lies solely with the Contractor.

6. Notices

Notices given as required under this Contract shall be as follows:

For the City:

City Administrator, City of Aberdeen  
200 E. Market Street  
Aberdeen, WA 98520  
Phone (360) 537-3233

For the Contractor:

Harold LeMay Enterprises, Incorporated  
4201 Olympic Hwy  
Aberdeen, WA 98520  
Attention: District Manager  
Phone: (360) 533-1251

With a copy to:

Waste Connections, Inc.  
3 Waterway Square Place Suite 110  
The Woodlands, TX 77380  
Attention: Legal Department

And to:

Harold LeMay Enterprises, Incorporated  
4201 Olympic Hwy  
Aberdeen, WA 98520  
Attention: Division Vice President  
Phone: (360) 533-1251



7. Exclusive Rights to Garbage, Recyclables and Yard Waste Collection

The City hereby grants to Contractor, in accordance with the City's ordinances and regulations governing the collection, hauling, and disposal of Garbage, Residential Recyclables and Residential Yard Waste the exclusive franchise, license, and privilege to collect, haul, and dispose of all Garbage, Recyclables and Yard Waste throughout the City's present and future streets, alleys, bridges, and public properties and within the City's corporate limits, including any territories annexed by the City, unless otherwise subject WUTC rules and regulations, during the term of this Contract. In order to maintain the exclusive franchise in favor of Contractor contained herein, the City will work with the Contractor to take reasonable action against any company, Customer, or third party infringing upon the exclusive rights of the Contractor. Contractor may independently enforce the exclusivity provisions of this Contract against third-party violators, including, but not limited to, seeking injunctive relief, and the City shall use good faith efforts to cooperate in such enforcement actions brought by the Contractor.

Notwithstanding any other term contained herein, Contractor shall have no obligation to collect any Hazardous Waste, Dangerous Waste or Excluded Waste. Contractor shall notify the resident/business/generator, if such can be determined, that Contractor may not lawfully collect such Waste and leave a tag specifying the nearest location available for appropriate disposal.

8. Service Requirements

During the term of this Contract or any extension thereof, the City shall at all times have in full force and effect an ordinance requiring all residential and commercial establishments within the City to utilize the Contractor's Garbage collection service as provided in Exhibit A or as amended.

9. No Charge Collection Services

9.1 City Facilities

The Contractor shall, without cost or charge to the City, provide collection and disposal services, for all City-owned buildings and facilities as listed in Exhibit B; provided that, such duty shall apply only to normal collection and disposal services and shall not include a duty to dispose of demolition or construction debris.

Upon request, the Contractor shall promptly collect, remove, and dispose of all dead animals found on public rights-of-way and public places within the City limits and arrange for owned and marked City vehicles to dispose of City waste material at the same disposal site or transfer site used by the Contractor.

9.2 Spring Cleanup

Contractor

The Contractor shall provide services as directed by the City for its annual "Spring Cleanup". The City shall compensate the Contractor for actual cost of services provided in excess of \$55,000. The \$55,000 shall be adjusted annually beginning the year following

the signing of this Contract by the percentage adjustment up or down of the tip fee of the disposal location.

If the actual cost of service for the annual "Spring Cleanup" is less than \$55,000, the Contractor may carry over the excess toward the next event.

The \$55,000 set for carry over is not adjusted annually. 9.3 Shred Event

Annually, the Contractor shall provide services to residential Customers at a Contractor-sponsored paper drop site for shredding. The City shall advertise the event and coordinate with the Contractor on a date and location. Contractor shall shred and recycle at no charge, all items dropped off by residential Customers.

#### 9.4 Education

Annually, the contractor shall provide customers with at least one form of education for proper recycling and proper handling of Dangerous Material.

### 10. Preparation of Recyclables and Yard Waste

Recyclables must be tendered for collection free of contaminants. If any Recyclables or Yard Waste contain contaminants, such as Garbage or nonacceptable items, Contractor may decline to collect such materials without being in breach of the Contract so long as Contractor has properly notified Customer of such contamination. In the event that some Recyclables are not collected, the Contractor shall give the property resident notice in writing of the reason so that the problem can be corrected. The following categories of Recyclables shall be prepared by the Customers as follows:

- Aluminum and Metal Containers – All containers should be rinsed out.
- Cardboard – All cardboard must be flattened and placed inside the cart.
- Mixed Paper and Newspaper – Material shall be placed in cart loose (not in plastic bags) and be clean, dry, and free of food, plastic wrap, and other contamination.
- Plastic – Plastic containers must have lids removed and must be rinsed out.

Carts shall be placed at the curb on collection day by 6:00 a.m.

### 11. Collection Operations

#### 11.1 Collection Frequency

The Contractor shall provide collection of Garbage once a week, bi-weekly (every other week), or monthly based upon Customer subscription level.

The Contractor shall provide curbside collection of Recyclables bi-weekly (every other week), year-round.

If the City elects to implement curbside collection of Yard Waste, the Contractor shall collect bi-weekly, year-round on the same day as regular Garbage collection service. Yard waste collection will be opposite of scheduled curbside recycle collection.

### 11.2 Ownership of Materials

The Contractor becomes the owner of Recyclables upon collection and may market them in any manner selected by the Contractor. The Contractor shall not be responsible for and has not made any representation regarding the ultimate recycling of such recyclable materials by any third-party facilities.

The Contractor becomes the owner of Garbage upon collection, with sole authority and discretion to determine its disposition, provided that it shall be disposed of at a permitted solid waste disposal facility. Title to and liability for any Excluded Waste shall remain with resident/generator of such Excluded Waste, even if Contractor inadvertently collects and disposes of such Excluded Waste.

The Contractor becomes the owner of Yard Waste upon collection and shall deliver the Yard Waste to a fully-licensed compost processing site.

### 11.3 Weight Restrictions

Contractor is responsible for collection of all containers which do not exceed the weight limits described below:

30gallon Cart	53 lbs
60-gallon Cart	96 lbs
90-gallon Cart	144 lbs

If a cart exceeds a weight limit, the Contractor may refuse service and will tag the overweight container. The Contractor will work with the Customer to provide alternatives so that service will not be disrupted in the future.

### 11.4 Cart Replacement

Replacement necessitated by damage due to Contractor negligence shall be at Contractor's sole expense.

Replacement necessitated by damage due to Customer negligence shall be at the Customer's sole expense and at the then current value of the cart being so replaced.

Replacement necessitated by theft shall be at Contractor's or Customer's expense, depending on the circumstances.

12. Missed Collections

Contractor shall provide special collection when services have not been collected during the regularly scheduled trip as a result of the Contractor's inattention or neglect in picking up the same. A missed collection will be serviced within two (2) business days following notification; no return trip charge shall be assessed for such special collection.

Pickups for missed or special collections through no fault of the Contractor shall be made by the Contractor within two (2) business days following notification. A return trip charge shall be assessed.

13. Contractor's Employees

The Contractor shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, or disability. The Contractor shall ensure that applicants, and employees are treated equally during selection and employment without regard to their race, creed, color, national origin, sex, age, or disability.

The Contractor shall require all employees to be courteous at all times; not to use loud or profane language, and to do their work as quietly as possible.

Contractor employees performing collection shall follow the regular walks for pedestrians while on private property, returning to the street or alley after replacing the empty cans/carts.

Employees shall not trespass or loiter; nor shall employees enter private property other than from the right-of-way or alley. Notwithstanding the foregoing, Contractor shall have the right, until receipt of written notice revoking permission to pass is delivered to Contractor, to enter or drive on any private street, court, place, easement, or other private property for the purpose of collecting or transporting Garbage, Recyclables and Yard Waste pursuant to this Contract. Contractor is not liable for damage due to normal wear to any private street, court, place, or easement.

If a Customer removes access to their private roadway to Contractor for garbage and recycle service, the Customer is responsible to bring cart to an accessible location for pick up.

All employees shall be competent and skilled in the performance of the work to which they may be assigned.

14. Monitoring and Evaluation

The Contractor shall have a program in place to monitor and evaluate the quality of Customer service and to determine overall Customer satisfaction with the Contractor's services. Contractor shall provide City with Customer service data in its monthly reports to the City. The Contractor shall work with the City to monitor and ensure that high levels of Customer service are demonstrated throughout the term of the contract.

15. Collection Times

Collections shall be made between the hours of 6:00 a.m. and 6:00 p.m. No collections shall be made on Sundays. All collection operations shall be performed as quietly as reasonably possible. For collection operations, the Contractor may observe Christmas Day and New Year's Day as the only recognized holidays in each year of the Contract. Service for the balance of the week following these holidays will be provided no more than one (1) working day later than normally scheduled. The Contractor will provide thirty (30) days' advance notice to all Customers of altered service resulting from the observation of these holidays. Collection of Garbage, Recyclables and Yard Waste missed as a result of a holiday shall be collected the next day, with the exception of Sunday. Collections missed as the results of inclement weather shall be performed the next regularly scheduled collection day and Customers may set out double amounts/amounts equal to the number of missed collections at no additional charge.

16. Contractor's Office

The Contractor shall be required to maintain an office provided with a telephone and such attendants as may be necessary to take care of requests, billing, orders, Customer service, orders for Special service, or instructions from the City. This office shall be in operation between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, with after-hours voicemail messaging for Customers, except on the following Holidays: Christmas Day, New Year's Day, Memorial Day, 4<sup>th</sup> of July, Labor Day, Thanksgiving Day, and the day after Thanksgiving.

17. Service Area and Annexation Rights.

This Contract shall extend to any annexed areas serviced by the Contractor in lieu of a franchise as provided in RCW 35A.14.900 for such annexed areas. Contractor agrees that its certificate applicable to those annexed areas shall be cancelled effective the date of annexation by the City. Contractor expressly waives and releases its right to claim any damages or compensation from the City, its officers, agents, or assigns arising out of the cancellation of any pre-existing permit or franchise held by the Contractor prior to annexation, and further specifically waives the right to receive any additional compensation or any rights of collection in the newly annexed territory beyond what is provided herein.

The term during which Contractor shall service any annexed areas shall be for the term of this Agreement. Should this Agreement expire or be cancelled prior to the completion of ten (10) years from the effective date of any newly-annexed area, as applicable, that area shall revert to the authorized certificated solid waste collection company pursuant to WAC 480-70-141(5) upon approval of the reversion by the Washington Utilities and Transportation Commission, and service under WUTC jurisdiction shall continue for the balance of such ten year period affected by the expiration or cancellation of this Agreement.

Customers in the annexed areas shall receive the same containers as used elsewhere in the City, in accordance with the provisions of this Contract. Where an annexed area is being serviced with containers different from the City's program, Contractor shall be responsible for timely Customer

notification and removal of existing containers and delivery of appropriate containers to those Customers.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment, including, but not limited to, containers, provided by the Contractor in connection with the services, shall at all times remain the property of the Contractor. However, each Customer shall have care, custody, and control of the equipment while at the respective service locations. Customers shall not overload (by weight or volume), move, or alter the equipment, and shall use the equipment only for its proper and intended purpose. Customers must provide unobstructed access to the equipment on the scheduled collection days. The word "equipment" as used in this Contract shall mean all Containers or other equipment provided by the Contractor in relation to the services. In the event a container becomes lost, unsightly, unsanitary, broken, or unserviceable because of the acts or omissions of a Customer (excluding normal wear and tear), the Customer will be charged for the resulting repairs or replacement and such amounts must be paid to Contractor upon demand.

#### 17. Billing

Contractor shall have full responsibility for billing and collecting from Customers as defined in this Contract or the applicable municipal code section, for the collection, transportation and disposal of Garbage, Recyclables, and Yard Waste.

Any Customer who has not remitted all required payments 30 days after due date of billing, their account will be delinquent, after sixty (60) days their containers may be removed and after 90 days contractor may pursue collections.

The Contractor may pass on any return check fees to the Customer whose check has been so returned. Such return check fees shall not be included in the calculation of the franchise fee payable by Contractor to the City as described herein.

The City acknowledges that the Contractor shall deduct from gross revenues received applicable utility tax portions from all delinquent debt Customers to the extent the Contractor shall not be required to remit utility taxes on services to Customers for which they have not been paid. Upon payment of the delinquent fees plus interest, the Contractor shall resume collection on the next regular scheduled collection day.

#### 18. Service to New Customers

The Contractor shall provide service to new Customers within one (1) week after receipt of a request to do so. For Residential Service, Contractor shall provide the carts in which collection service shall be rendered. For commercial Customers, Contractor shall provide the requested container to the commercial service Customer. If the Contractor is unable to provide the requested container in the size ordered by the Customer within one (1) week of the request, then Contractor may temporarily provide the Customer with any size container, provided, however, the service provided to the Customer and the rate charged shall be equivalent to the service and rate for the requested container.

The Contractor shall, upon request and without additional cost, make available either to the City or the property owner, reasonable planning assistance on new construction or major remodeling of buildings and structures within City limits with respect to the design and location of Garbage and Recycling collection and removal facilities and their location upon the site of the proposed construction or remodeling project.

Any new or remodeled enclosures shall be subject to the reasonable approval of the City and Contractor.

19. City-Owned Buildings and Facilities Collections

The Contractor does hereby agree to furnish collection and disposal services, free of charge, for all City-owned buildings and facilities as listed in Exhibit B; provided that, such duty shall apply only to normal disposal services and shall not include a duty to dispose of demolition or construction debris. City facilities include, but are not limited to: City Hall, City Shops, Parks, Sewage Treatment Plant, Library, and downtown sidewalk refuse containers.

20. Equipment and Maintenance.

All collection vehicles used and operated by Contractor shall be enclosed vehicles and shall be designed to be watertight and drip-proof, so that no material or wastewater may at any time spill or drip upon the streets of the City. All equipment used by the Contractor shall be kept and maintained in a clean and inoffensive manner and shall be thoroughly washed at least once a week or as often as directed by City personnel. All collection vehicles shall be equipped with either Route ware or GPS service.

Each vehicle shall have the identification number clearly visible on the collection vehicle.

Any equipment found not to comply with the above standards shall be taken out of service and brought into compliance with the standards before being placed back in City service.

Notwithstanding anything to the contrary contained herein, it is expressly understood and agreed that all equipment provided by the Contractor in connection with the services provided pursuant to this Contract, shall at all times remain the property of the Contractor.

21. Service for Physically Challenged

Contractor agrees to assist Residential units inhabited by persons who are unable to place materials at curbside due to being physically challenged with house-side collection of their carts; provided, that the Contractor receives prior written notice from the Customer of such special need and that there are no other residents at the address able to assist in the placement of carts. Contractor shall not be responsible for any modifications and accommodations that may be required by the Americans with Disabilities Act or any other applicable law or regulation in connection with the services provided hereunder. There will be no additional charge for this service.



## 22. Force Majeure

Contractor's performance under this Contract may be suspended, and the obligations hereunder excused in the event and during the period that such performance is prevented by a cause or causes beyond reasonable control of the Contractor. Contractor's performance under this Contract will be suspended, and the obligations hereunder excused only if prompt written notice is provided to the City describing in reasonable detail the conditions claimed under this provision. Contractor's performance shall be suspended only until the condition preventing performance is remedied. Such conditions shall include, but not be limited to, acts of God including landslides, lightning, forest fires, storms, floods, and earthquakes acts of war, accident to machinery, equipment or material, explosion, riot, epidemics, pandemics, sabotage, acts of terrorism, unavailability of required materials or disposal restrictions, or judicial or governmental laws or restraints.

## 23. Performance Bond

The Contractor shall furnish to the City a performance bond, on an annually renewable form, in the sum of Twenty Thousand and 00/100 Dollars (\$20,000) for the faithful performance and intent of this Contract, which bond shall run for the entire term of the Contract, including any extensions. Upon written demand and cure period, the City may make demand under the performance bond for the Contractor's failure to comply with the material terms of said Contract. Contractor's performance bond is only subject to forfeiture if Contractor breaches its obligations to the City and such breach remains uncured by Contractor; provided, however, the City shall only be entitled to that portion of the performance bond that represents the actual proven damages of the City as a result of such uncured breach. In the event such performance bond shall be exhausted or not be renewed and Contractor does not provide a replacement performance bond in like kind and amount within the thirty (30) days of such event, the Contractor shall be in breach of this Contract and the City may, at its option, terminate the same without waiver of its claim for any damage caused by such breach and termination.

## 24. Insurance

### 24.1 Specific Coverage

Contractor shall obtain insurance of the types and coverage described below:

- Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under Contractor's Commercial General Liability insurance policy with respect this Contract using ISO endorsement CG 20 26 07 04 or substitute endorsement providing at least as broad coverage.

- Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.
- Contractors Pollution Liability insurance shall be in effect throughout the entire Contract covering losses caused by pollution conditions that arise from the operations of the Contractor. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.
- Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Contractor's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Contractor's Excess or Umbrella Liability insurance policy.

#### 24.2 Insurance Limits

Contractor shall maintain the following insurance limits:

- Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.
- Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.
- Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.
- Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Contractor's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

#### 24.3 Other Insurance Provisions

Contractor's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

#### 24.4 Acceptability of Insurers.

Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII.

#### 24.5 Verification of Coverage.

Contractor shall furnish the City with original certificates and a copy of the amendatory endorsements annually, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Contract. Upon request by the City, the contractor shall furnish certificate of Insurance of all require insurance policies, required in this contract and evidence of all subcontractor's coverage

#### 25.5 Subcontractors.

The Contractor shall cause each and every subcontractor to provide insurance coverage that complies with all applicable requirements of the Contractor-provided insurance as set forth herein, except the Contractor shall have sole responsibility for determining the limits of coverage required to be obtained by subcontractors. The Contractor shall ensure that the City is an additional insured on each and every subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

#### 25.6 Notice of Cancellation.

Contractor shall provide the City with written notice of any policy cancellation within two (2) business days of their receipt of such notice.

#### 25.7 Failure to Maintain Insurance.

Failure on the part of the Contractor to maintain the insurance as required shall constitute a material breach of Contract, upon which the City may, after giving five (5) business days' notice to the Contractor to correct the breach, terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

### 26. Indemnification and Hold Harmless Agreement

Contractor shall defend, indemnify, and hold harmless the City, its officers, officials, employees and volunteers from and against any and all claims, suits, actions, or liabilities for injury or death of any person, or for loss or damage to property, which arises out of Contractor's acts, errors or omissions, or from the conduct of Contractor's business, or from any activity, work or thing done, permitted, or suffered by Contractor arising from or in connection with this Contract, except only such injury or damage as shall have been occasioned by the sole negligence of the City

It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Contract. Materials collected in the City shall be disposed of in accordance with state, federal, county, and local laws at properly licensed and permitted disposal facilities, subject to Sections 7 and 11 herein.

The Contractor shall abide by all applicable rules and regulations that govern the solid waste disposal facility utilized by Contractor.

27. Damage to Property

If any City property is damaged as a result of the Contractor's negligence or willful misconduct, the Contractor shall repair or replace the same (but only to the extent such damage is caused by Contractor) after being notified of the damage. The Contractor is required to provide action plan to the city within 48 hours of the notification.

Except in the case of Contractor's negligence or willful misconduct, Contractor shall not be liable for any damages to pavement, curbing, or other driving surface resulting from the weight of its trucks and equipment.

It is understood and agreed that the Contractor shall not be required to clean up, collect or dispose of any loose or spilled materials not caused by the Contractor's rendering of the services described herein, or be required to collect and dispose of any excess materials placed outside of the containers by any Customer. To the extent spillage is caused by Contractor's negligence or willful misconduct, the Contractor shall immediately clean up such spillage upon notice.

28. Default

Any failure by Contractor or its successors and assigns to observe the terms and conditions of this Contract shall, if continuing or persisting without remedy for more than thirty (30) days after the receipt of due written notice from the City, constitute grounds for forfeiture and immediate termination of all the Contractor's rights under this Contract, and all such rights shall become null and void.

29. Compliance with Laws

The Contractor agrees and covenants to comply with all provisions of federal, state, county, and City laws and ordinances affecting, directly or indirectly, the subject matter of this Contract.

30. Reporting, Record Keeping and Audits.

30.1 Reporting

Contractor shall provide the City on a weekly basis a report listing all the starts and stops transacted within that week to be received by the City on the last working day of the following week.

Contractor shall provide the City a report or data as requested. The City will work with the Contractor to determine the report and data that can be provided.

The Contractor shall be diligent in the use of the best available and most accurate weight estimating practices available in calculating the weights of materials collected under this Contract. In the event the Contractor commingles, in the same vehicle, Garbage and Recyclables collected under this Contract with those collected from other clients, a

mutually agree upon procedure for estimating the City's portion will be established. It will be the Contractor's responsibility to submit the procedure/methodology and the City's responsibility to reasonably approve any such procedure/methodology.

### 30.2 Recordkeeping

The Contractor shall at all times reasonably cooperate with the City in providing all information relating to this service rendered under this Contract. The Contractor shall maintain records of the materials' volume collected hereunder and the revenues collected therefrom. These records shall be maintained in such a manner as to readily support the amounts report to the City and shall reflect the rates and amounts charged to Customers. The Contractor shall maintain these records for a minimum of three (3) years.

### 30.3 Audits

The City shall have the right to reasonable access to Contractor's records during the Contractor's office hours and to have those records audited by a City staff member or a City-designated auditor, at the expense of the City, any time during the Contract term and as often as the City shall desire. Anything else herein notwithstanding, the City shall have no right to review or audit the Contractor's confidential, proprietary, or privileged information, as determined in the sole and absolute discretion of the Contractor.

## 31. City Utility Taxes and Franchise Fee

### 31.1 Utility Tax

The Contractor shall separately identify on each Customer's bill the imposition of any utility tax on collection services mandated by the City. Each month the Contractor will submit gross revenue billings and subtract bad debt adjustments to arrive at net revenue. The utility tax is calculated on this net revenue component at 4.5%, or as otherwise adjusted by the city, and submitted to the city.

### 31.2 City Franchise Fee

The Contactor shall pay to the City, \$10,000 a month during the period the Contract is in effect.

### 31.3 Tax on Tax

Contractor shall be allowed to recover bypass-through any attrition in net revenue caused by the "tax on tax" effect of gross-up of revenues to absorb utility and/or business and occupational taxes which are assessed on the gross revenues of the Contractor.

## 32. Refuse Collection Tax

The Contractor shall pay the State of Washington a refuse collection tax in accordance with RCW 83.18, as amended.

33. Other Taxes

All taxes required to be paid by any state, federal, or local law shall be in addition to the rates set forth in Exhibit A as a line item(s) on Customer invoices.

34. Rates and Rate Adjustments

The Contractor's initial charges for collection, transportation and disposal services shall be those established and contained in attached Exhibit A and by the reference incorporated herein. Commencing with the year "2026" the rates set forth in Exhibit A, excluding Garbage disposal fees, shall be subject to an annual adjustment calculated as follows: on January 1 of every year of this Contract, the rates and charges shown in Exhibit A, shall increase or decrease by one hundred percent (100%) of the annual percentage change in the preceding year's first half Consumer Price Index for the Seattle-Tacoma-Bremerton Area for All Urban Consumers, all items, (1982-84 = 100) (CPI-U), not seasonally adjusted (CPI-U), as calculated and prepared by the United States Department of Labor, Bureau of Labor Statistics or a replacement index mutually agreed upon by the parties.

On or before October 1<sup>st</sup> of each year or as information becomes available from required outside sources, Contractor shall submit to the City for review and approval a rate adjustment statement calculating the new rates for the next year. The City shall approve or disapprove of Contractor's calculations within thirty (30) days of receipt of such rate adjustment statement. Contractor shall provide 45 days' notice to Customers of the new rates.

35. Other Adjustments Bases

35.1 Disposal Increases

The rates in Exhibit A may be increased by the direct increase in disposal costs calculated on 35 lbs. per 30-gallon cart, 64 lbs. per 60-gallon cart, and 96 lbs. per 90-gallon cart, 180 lbs. per yard of container capacity, or actual tonnage in a drop box. The increase is to be implemented on the effective date of the increase at the disposal facility, provided Contractor has notified Customers 45 days advance notice of the impending rate change.

35.2 Recyclables Rate Adjustment

In alignment with the CPI timing, notice and City approval requirements in Section 36.1 above,

Commencing with the year 2026 the Residential rates set forth in Exhibit "A" shall be adjusted annually based on the preceding years average recycle pricing. The initial base rate will be set at negative (\$79.22) per ton. Contractor will adjust rates by the percentage change in the average annual recycle pricing. Contractor shall provide City with documentation of recycle rates upon request. If recycle rates change more than 20% from the last recycle rate adjustment, the Contractor can request adjustment from the

city during the course of the year. The approval for any recycle increase/decrease shall not be unreasonably withheld, conditioned, or delayed by the City.

### 35.3 Fuel Surcharge

In addition to the rates set for in Exhibit A, Contractor shall assess a fuel surcharge, subject to City approval, based on the difference between the actual fuel costs incurred by Contractor over an initial base rate of \$5.00 per gallon at commencement of this Contract. Any increases shall begin on the next regular billing cycle. Contractor shall provide City with documentation of actual fuel costs paid in Contractor's monthly report to the City. If after instituting a fuel surcharge, fuel prices decrease to or below the \$5.00 per gallon rate, the surcharge will be eliminated beginning the next regular billing cycle. The approval for any fuel surcharge shall not be unreasonably withheld, conditioned, or delayed by the City.

### Carbon Fee

The average Carbon Fee from the previous year, shall be an additional fee to Customers which shall be shown as a separate line item on the Customer's statement.

### 35.4 Other Adjustments

In addition to any disposal fee adjustments, the Contractor shall be permitted to propose pass-through rate adjustments for any changes in local, state, or federal laws or policies which increase the cost of providing Garbage, Recycling or Yard Waste services pursuant to this Contract. After Contractor provides documentation of the impact of such changes, the City shall review the proposed rate changes and approve or disapprove of the proposed rate change. City's approval shall not be unreasonably withheld, conditioned, or delayed.

### 36. Notice of Rate Increases/Decreases

The Contractor shall provide the City with notice of any such proposed rate changes upon Contractor being notified of any such changes, but not less than forty-five (45) days prior to the effective date of such increase or decrease. In connection therewith, the Contractor shall provide the City with all reasonable information requested by the City related to such rate adjustments. Contractor shall notify Customers of any rate changes pursuant to local laws and regulations.



### 37. Liquidated Damages

- The Contractor may be subject to liquidated damages for the following acts or omissions if documented in an incident report presented by the city and found to be true after mutual investigation. Liquidated damages may include, but are not limited to:
  - Collection before or after the collection times specified in Section 15 - \$200 per Route Unless mutually agreed by City and contractor due to force Majeure Circumstances.
  - If City observed leakage from Contractor vehicles or vehicle contents are not cleaned up to city's satisfaction there maybe a - \$100 per vehicle plus cleanup costs.
  - Failure to collect missed collections as specified in Section 12- \$150 per missed collection. Unless the missed collection is due to blocked or not out containers or due to Force Majeure circumstance.
  - Landfilling or incineration of uncontaminated loads of Recyclables or Yard Waste \$1,000 per vehicle. Unless mutually agreed by city and contractor due to economic reasons.

### 38. Dispute Resolution

In the event of any dispute arising out of this Contract, the parties agree they may submit the dispute to non-binding mediation under the then prevailing rules of the American Arbitration Association: PROVIDED, that, in the event either party objects to the submission of the matter to arbitration within thirty (30) days after demand for arbitration has been filed with an appropriate agency, then the procedure shall be terminated and the matter shall be processed as the parties deem appropriate through the courts of the State of Washington. In the event of resolution of a covered dispute by litigation, in addition to any other relief granted to the substantially prevailing party, if any, the court shall award that party reasonable attorneys' fees and costs incurred in prosecuting or defending the matter, as the case may be.

### 39. Enforcement of Contract

If either party shall bring any action to interpret or enforce any provision of the Contract, the non-prevailing party shall pay the successful party a reasonable sum for its attorney fees and costs actually incurred, including those related to any appeal.

### 40. Governing Law; Venue

This Contract shall be governed by and construed in accordance with the laws of the State of Washington.

### 41. Severability

If any term or provision of this Contract is, to any extent, held invalid or unenforceable, the remaining terms and provision of this Contract shall not be affected thereby, but each remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

42. Interpretation

It is acknowledged that each party has had the opportunity to have this Contract reviewed by counsel of its choice and that the rule of interpretation against the drafter shall not apply.

43. Supersession of Existing Contract

It is agreed to be the parties that, as of the effective date of this Contract, it shall succeed any existing Contract, it shall succeed any existing contract in place: Provided that, ANY RIGHT OR RESPONSIBILITY OF A PARTY WHICH MAY HAVE ACCRUED PRIOR TO THE EFFECTIVE DATE OF THIS Contract shall not be affected.

**IN WITNESS WHEREOF**, the parties to these presents have executed this Contract in three (3) counterparts, each of which shall be deemed as originals on the year and day first above mentioned.

Harold LeMay Enterprises,  
Incorporated

By: \_\_\_\_\_  
Mark Gingrich  
Division Vice President

City of Aberdeen, Washington

By: \_\_\_\_\_  
Douglas Orr  
Mayor

ATTEST:

BY: \_\_\_\_\_

APPROVED AS TO Form:

By: \_\_\_\_\_

EXHIBIT A  
Rate Sheet

## EXHIBIT B

### City Facilities No Charge Service

#### **Pioneer Park**

- 1) 1.5yd weekly
- 6) 1.5yd weekly

#### **Log Pavilion**

- 2) 1.5yd Weekly

#### **118 W. Wishkah Street**

??

#### **Aberdeen Lake**

- 1) 1.5yd Weekly

#### **Bishop Athletic Center**

- 2) 1.5yd Weekly

#### **Aberdeen Sewer**

- 4) 1.5yd Weekly

#### **Aberdeen Fire**

- 1) 1.5yd Weekly

#### **Aberdeen Police**

- 1) 2yd Weekly

#### **Aberdeen Library**

- 1) 1.5yd Weekly

#### **Aberdeen Street Department**

- 1) 1.5yd Weekly

#### **Aberdeen Water Department**

- 1) 1yd Weekly

#### **City Street Cans**

- 31) 30 gallon, Weekly

#### **Homeless Camp**

- 1) 6yd Weekly

#### **Splash Festival**

- 1) 20yd roll off Annually

Other services mutually agreed between city and contractor





CITY OF ABERDEEN  
Washington  
Since 1884

## Request for Council Action

Date Action is Requested: 4/24/24

Subject: **Grays Harbor County RFP for Property Acquisition for a Micro-Shelter Village**

### COMMITTEE:

- Finance  Public Works  
 Public Safety  Special Agenda Item

### TYPE OF ACTION REQUESTED:

- Ordinance No.  Resolution No.  
 Motion  Discussion  
 No Action - Information Only  Other:

### SUMMARY OF REQUEST:

### POLICY IMPLICATIONS:

- This action is in accordance with current policies and procedures.  
 This action would require a new  policy  ordinance  resolution  other action from the Council.  
 This action requires a revision to  policy  ordinance  resolution  other.  
 Does not affect current policies and procedures.

### FISCAL IMPACT:

There is no fiscal impact to apply for this grant.

### BUDGETARY STATUS:

- Funds have already been authorized in this year's budget.  
 This is an extra-budget expenditure.  
 Funds will be requested for this action, if approved, in next year's budget.  
 This action will bring in additional revenue.  
 This action will require city staff time and/or labor.  
 This action has no budgetary implications.  
 This action will reduce expenditures.  
 Other:

### BACKGROUND/RATIONALE:

Grays Harbor County has advertised a request for proposals to interested and qualified agencies to purchase or designate a physical asset and obligate such real property to be used to provide emergency shelter for an indefinite period of time.

The City has set aside \$200,000 for the purpose of acquiring property as a location for homeless adults. The grants would provide additional funding to purchase a piece of property.

**RECOMMENDATION(S):**

Authorize the City Administrator to submit an application for consideration by Grays Harbor County.

**REVIEWED BY LEGAL:**       YES       NO       NOT REQUIRED

**ATTACHMENTS:**

- Request for Proposal for Capital Investment in Emergency Shelter Capacity

\_\_\_\_\_  
Staff Name

\_\_\_\_\_  
Committee Chair Name

\_\_\_\_\_  
Staff Signature

\_\_\_\_\_  
Committee Chair Signature

<b>This request aligns with the following City Council Values:</b>	
<input type="checkbox"/> Workforce Engagement & Development	<input checked="" type="checkbox"/> Vibrant, Safe & Healthy Community
<input checked="" type="checkbox"/> Economic Development	<input checked="" type="checkbox"/> Infrastructure Investment
<input type="checkbox"/> Fiscal Responsibility	<input type="checkbox"/> Communications & Outreach

**CITY OF ABERDEEN**  
**PROPOSAL TO PROVIDE CAPITAL INVESTMENT IN**  
**EMERGENCY SHELTER**



**APRIL 26, 2024**



Grays Harbor County Public Health  
2109 Sumner Avenue  
Aberdeen, WA 98520  
Attn: Natali Burgess

April 26, 2024

Dear Selection Committee Members,

It is with genuine enthusiasm that the City of Aberdeen submits our proposal to acquire property for the purpose of providing emergency shelter services in Aberdeen. Emergency shelter services provide a critical safety net, saving both lives and providing valuable health care, mental health and social resources. Homeless people suffer preventable illness, exposure to harsh elements and are more likely to be victims of violence, sexual assault, and crime. A Transition Village, like that proposed by the City of Aberdeen, can provide primary needs like protection from the weather, coordinated services including mental health and substance abuse disorder, and work readiness skills preparation.

The City has faced a homeless crisis since 2017 and has made many attempts to solve this social issue which requires a realm of services the City has not be prepared to or has been able to provide. In the last two years, the City has taken great strides in engaging the community to understand the effects of homelessness; work with and strengthening our governmental partnerships to address the impacts of homelessness on our community and infrastructure; creating a strategy that includes both short and long-term goals; and building bridges between the unhoused community and services providers.

Since 2019, the City has spent more than \$2 million in supplies, security, cleanups, staffing, and sanitation obligations all towards responding to the impacts of homelessness on our community, businesses, streets, infrastructure, and people. The July 2023 Snapshot of Homelessness in Washington report released by the Department of Commerce revealed there are over 2,000 people who are homeless in Grays Harbor County. Because social services are located in Aberdeen, the City estimates that approximately half of homeless individuals in Grays Harbor reside in Aberdeen or are hidden in the surrounding woods. The City has approximately 70 people living on State Street and River Street, directly in the heart of our downtown core.

The City of Aberdeen is prepared to take its homeless response efforts to more effective and sustainable heights by purchasing a 4-acre piece of property that includes a 5,500+ square foot building ripe for renovation as the new site for a transitional shelter for unhoused individuals.

The prospective acquisition of this property provides a rare and unique opportunity for a location that meets the needs of nearly 1,000 people who provided feedback from a survey on homelessness launched by the City. The property is connected to all utilities, accessible by bus and paved walking path, has offices, bathrooms, and acreage for some expansion of services.

The scales of Washington's housing shortage and resulting homelessness can only be solved by the availability of important funding like this and providing emergency shelter options until

permanent options become available. The proposed shelter is not intended to be a long-term solution to ending homelessness, but instead would work in tandem with the great work social service resource groups are effectively doing each day.

During the process of piecing together a strategy, the City recognized the importance of building and strengthening partnership when addressing homelessness. No one entity can do it alone. We thank you for making this funding available and for the opportunity to share our vision of bringing healing to our community and ensuring that unhoused people in our city have a warm place to lay their heads.

Please do not hesitate to reach out to me if you have questions regarding our approach. We look forward to the next steps.

Sincerely,

Douglas Orr, Mayor  
City of Aberdeen

DRAFT

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## PROPOSAL TO PROVIDE SHELTER SERVICES

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## **GENERAL PROJECT DESCRIPTION**

The City of Aberdeen is seeking \$500,000 from Grays Harbor County for investment toward the acquisition of property for the future site of a low barrier transition village aimed at serving homeless adults.

### **Proposed Property Location & Use**

The City of Aberdeen is proposing to install and develop approximately 100 Conestoga huts for the purpose of short-term, safe and stable housing for homeless adults who are waiting for affordable housing to become available. The City is proposing to remodel a 5,000+ square footage building to host laundry, showers, staff offices, kitchen, day room and spaces to support case management programs and coordinated services. The property location is on 4 acres on Junction City Road.

The proposed model will mimic a model used by the cities of Moses Lake and Walla Walla. The transition village site model is offered to any unhoused individual and uses individual Conestoga huts which are a reliable, cost-effective, safe and efficient way to provide a pathway to permanent housing.

The huts are approximately 60 square feet of interior space that can host a twin sized bed, have solar-powered lights, windows, lockable doors and a lockable external storage bin. The huts are waterproof, mold-resistant, insulated, built from recyclable materials and can be built with wheelchair accessibility. The huts are considered to be a safer option than a congregate shelter because of the security a locked hut presents resulting in the need for increased staffing requirements. The huts are also a more cost effective than that of pallet and tiny homes and provide the same protection from the elements.

This ideal property is located on a Grays Harbor bus route and includes a paved walking path that leads into downtown where shopping and other local services are offered. If selected by the Commission, the City intends to provide a walkway across the Junction City bridge for individuals wishing to walk to town will be able to connect to the East Aberdeen Waterfront Walkway from the proposed shelter site.

### **Operations**

A critical element of the project is the inclusion of on-site wraparound and coordinated services. The City of Aberdeen is seeking a partnership with a reputable community resource partner to provide on-site operations, case management and organization of the coordinated services of individuals who are sheltered at the location. The transition village will act as a centralized location for unhoused individuals for community resource groups that can provide mental health, substance abuse disorder, job skill development and reunification services. Life, financial, employability and home management skills and education will be part of required services which will be supported through a community environment.

The transition village will be designed as a drop-in village starting in the evening hours. Drop-in times after the designated cut-off times, will be arranged through the Aberdeen Police Department. There will be a centralized check in-point through the main building. There will be rules and policies in place that will prohibit the use of drugs or alcohol on site. It will be operated on a first come, first serve approach. Any unsheltered families with minors will be directed to other services as minors are not allowed to stay at the site.

Pet will be welcome to the village as long as they are not aggressive or cause a disturbance. Village guests with pets will be expected to pick up after their animal at all times.





## READINESS

The City of Aberdeen allocated \$200,000 in its 2024 budget to go towards the acquisition of a property for the purpose of developing a homeless transitional village.

The City has committed lobbying services to securing funding for homelessness efforts.

The City has been selected to participate in the Rural Technical Assistance program through GS Consulting. This program is funded by the Department of Commerce and helps rural communities prepare for developing homeless and affordable housing and applying for critical funding such as the Homeless Housing Trust Fund.

The City has met with state representatives, the Department of Commerce and community resource groups who are all ready to support our project whether through funding support or provided services.



## **LEVERAGING**

### **Physical Property**

The property that the City is intending to purchase will require the city to use approximately \$300,000 of its own funds to purchase. The City plans to use funds from this RFP to leverage the purchase of the property.

### **Development and Remodel**

The City has been selected to work with GS Consulting in their Rural Technical Assistance Program. The program is funded by the Department of Commerce and provides assistance to rural communities to navigate the complexities of affordable housing and homeless funding. The goal in working with this firm is to prepare the city to apply for and secure competitive homeless funds that are critical in the development and remodel of the building. GS Consulting has been successful in helping other rural communities like Shelton and South Bend secure funding from Commerce to develop affordable and homeless transitional housing.

The City has also worked closely with our state representatives who have committed to assisting Aberdeen in their goals of providing a solution to homelessness in Aberdeen.

The City estimates that it will need at least \$3.5 million to create a Conestoga hut village with approximately 100 huts. There will be a community/programs building that will include a day room, space for programming like mental health services, substance abuse disorder services, life skills and job skills preparedness training.

The proposed community model includes the construction of 100 temporary individual Conestoga micro-shelters that are secure, insulated, dry, mold resistant and built from recycled materials. The micro-shelters are 60 square feet and will have a twin-size bed, lockable door, window, solar-powered light, and a lockable storage box.

## **CAPACITY**

The City approaches resolving the impacts of homelessness in a functional manner that focuses on the protection of infrastructure, life, safety and health. Because the City lacks the expertise and ability to address homelessness from a social perspective, it aims to partner with a reputable resource group to provide on-site programming and case management services.

### **City of Aberdeen**

The City currently maintains garbage and debris in two encampments in Downtown Aberdeen. The City's Public Works Department current provides and health and sanitation services at both encampments once a week. The City has taken on a larger monthly health and sanitation garbage and debris removal. Police, fire and emergency medical services are provided to both camps on a daily basis. The city estimates monthly average services costs to be \$16,000-\$20,000 per month.

We partner with various community resource groups to provide on-site behavioral health services to unhoused individuals during these clean ups.

In the last year, the City has taken strides to better address its approach to dealing with homelessness through various important partnerships, researching, learning from and interviewing other municipalities, gleaning insight from local governmental partners, and understanding the needs and concerns of Aberdeen residents, businesses, visitors, faith institutions, unhoused individuals and community resource groups. Using collected feedback and information, the City has been able to create effective and compassionately accountable ordinances; influence legislation and legislative spending; apply for programs that will increase our likelihood of receiving funding; explored and determined a best model that fits the needs of the city council and community; and created more cohesiveness in a vision that best fits the needs of most stakeholders.

The City of Aberdeen has explored more modern, law complying ways of finding solutions to homelessness since 2017. The City has made prior attempts to creating and designating spaces that would serve as a location for unhoused individuals. Twice the city has faced legal issues when dealing with homelessness, unfortunate events where Aberdeen has been made an example early on in the court's intervention on city's enforcement of local laws. The city learned quickly how to navigate case law and enforcement.

The City has created a Mayor-appointed committee called the Homelessness Response Committee (HRC) which is comprised of councilmembers, business leaders, local residents, community resource members, faith community members and city staff. The goal of the committee is to create long-term and short-term strategies that focus on the impacts of homelessness. The HRC was able to gather a year's worth of stakeholder feedback and data that establishes and substantiates a need for the city to consider a homeless transitional shelter solution.



## **Prospective Partner**

The City's ideal resource partner would have a long history of addressing homelessness and the outcomes of homelessness through client-focused case management. The organization would be dedicated to and have a strong history of serving and enhancing the lives of vulnerable populations. They would also have a history of operating housing/shelter solutions for homeless people.

The prospective partner would also have strong partnerships at all levels of government. The organization would have employee resources to provide ample services and would understand the complementary partnership between the city and its operational parameters. The organization would tackle the day-to-day operations of the village and the city would provide support in the form of community engagement, financial resources, utility services, lobbying partnership, fund seeking and advocacy.

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## SCOPE OF WORK/SITE PLAN

### Project Description

The City of Aberdeen proposes to create approximately 100 Conestoga micro-shelters and a 5,500 square foot space for programming, case management, office spaces, bathrooms, showers and small kitchen.

Project will include site acquisition, a combination of demolition, renovation and new construction. The property is Grays Harbor County limits and is located along a bus route and paved walking path from east Aberdeen. If purchased, the city plans to annex the property into city limits.

The site is suitable for temporary residential use, with opportunities for on-site green spaces, and community spaces. Our goal in the Rural Technical Assistance Program is to understand what feasibly can be achieved within our financial parameters.

The site will be divided into sections for general population, women and actively recovering occupants. The proposed model uses a non-congregate, safe and private quarters approach that is off the street and provides for the shared use of common facilities.

There will be foundation village elements such as amenities and physical elements that are supportive components of the values of the village and essential to addressing basic human needs. These included shared facilities such as bathrooms, kitchen/food preparation area(s), access to water, security elements like locked doors and fencing, and spaces to comfortably gather as a community. The non-congregate model also allows for more privacy for occupants but increases security through its line-of-sight model.

Conestoga micro-shelters are constructed using readily available materials and can be constructed for approximately \$3,500 each. They are built from a simple design plan created by a village in Eugene, Oregon and successfully used by the cities of Ellensburg, Walla Walla and Moses Lake.



Walla Walla Village  
Before and After

Task	Timeframe
<b>Council approved \$200,000 toward purchase of property for the use of a transitional village</b>	December 2023
<b>Submit RFP application to County</b>	April 2024
<b>Begin rural technical assistance process with GS Consulting.</b>	May 2024
<b>Develop and finalize operational and financial scenarios toward a viable and sustainable operational model.</b>	June 2024
<b>Purchase Property (finalize)</b>	July 2024
<b>Apply for Homeless Housing Trust Fund for remodeling funds</b>	August 2024
<b>Design Phase</b>	January 2025
<b>Construction &amp; Engineering Planning</b>	May 2025
<b>Remodel/Construction</b>	July 2025
<b>Shelter Open</b>	September/October 2025

## **PUBLIC OUTREACH/ENGAGEMENT**

The City of Aberdeen, City Council identified homelessness as a priority in 2018.

In March of 2022, the Aberdeen City Council established a Homeless Response Committee (HRC) and appointed 5 Council members, a downtown business representative, a member at large and a County Commissioner. The HRC has been meeting twice a month since 2022.

The initial focus of the HRC was to identify goals and next steps. Creating a place outside of the downtown and into treatment was a priority and HRC members agreed there was a sense of urgency and a need for immediate action.

Another goal of the HRC was to learn what is working, what is not both locally and in other jurisdictions.

Since 2022 the HRC:

- Survey
  - Launched a community-wide survey and received 943 responses.
    - Business Community Survey: 257 responses
    - General Community Survey: 686 responses
    - Non-Aberdeen residents: 137 responses
- Town Hall Meetings
  - Business Community –March 23, 2023
  - Wards 5&6 –April 18, 2023
  - Unhoused Community –April 27, 2023
  - Wards 1&2 –May 2, 2023
  - Wards 3&4 –May 23, 2023

- Faith Community –August 15, 2023
- Social Services & Community Resources –August 29, 2023
- Governmental Partners Discussions
  - County Commissioners –September 19, 2023; November 21, 2023
  - Port of Grays Harbor –October 4, 2024
  - Grays Harbor Public Utility District –Regular coordination meetings
  - Washington State Department of Transportation –Regular coordination meetings
  - Puget Sound & Pacific Railroad –Regular coordination meetings

The City has met with and has the support of numerous City representatives across the State as well as consulted with other states in hopes to gain a better understanding of address homelessness.

Staff have attended countless workshops, lobbied legislators, met with the Department of Commerce, met with nonprofit organizations whose mission is to support the homeless, all to gain perspective on building a successful shelter.

## **OPERATIONAL PLAN**

Over the last year, the City has developed strong relationships with various community resource partners who have committed to providing services in the event the City could achieve the creation of a transitional housing site. We have a potential partnership with a strong organization that is considering operating the site. We currently in discussion of the parameters of the partnership and a proposed scope of work.

Proposed operations will be a low barrier transitional village that serve adults experiencing homelessness. Operations will have realistic and clear expectations and rules and policies that are narrowly focused on maintaining a safe environment that provide exits to homelessness. Village occupants will be required to participate in supportive services and/or receive case management services that may include job skill development and readiness training.

The programming building will host a day room, office spaces for programing and case management services. There will be areas throughout the site that will include community-minded activities and gathering spaces like garden areas and covered and uncovered tables.

Programming offered to occupants will involve a client choice model that will include but is not limited to a variety of resource service providers from behavioral health specialists, housing and employment case management, and harm reduction services to address substance use disorder. Aberdeen has a host of agencies and organizations that have missions and goals focused on providing services to the most vulnerable populations. The proposed model provides a centralized location for these organizations to provide their services, whether on site or by providing shuttle services to receive treatment. We have received informal commitments from agencies and organizations that will support the proposed transitional village because it serves to fulfill important parts of their missions that include a continuum of care.

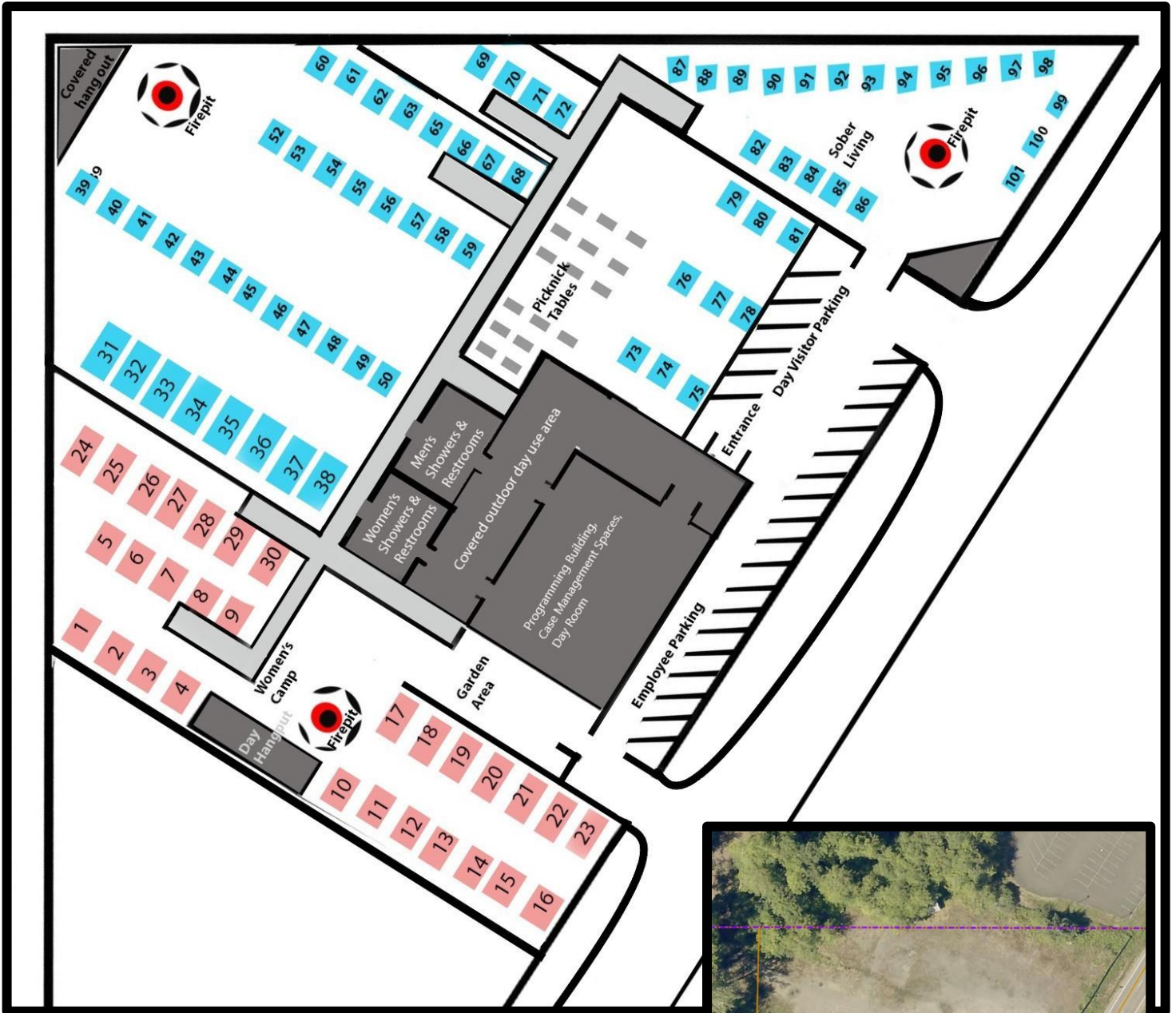
On site programming and case management coupled with more secure shelter options, will optimize self-sufficiency among those experiencing homelessness.

In the proposed model below, there are carefully considered populations of people with different needs. Women will have the option to sleep in separated sections than men. Those occupants who are in active recovery have the option to reside into a restricted section to allow them to continue the difficult challenge of overcoming addiction. Each section has been designed to include separate entrances and some ADA compliant micro-shelters.

Each section comes with community spaces for opportunities to gather in a community-minded fashion.

DRAFT





Proposed conceptual drawing/artist rendition. Not drawn to scale. Actual number of micro-shelters will be determined during planning phases.



## BUDGET

### Site Renovation and Preparation

Expenditure Items	Budgeted
Property Acquisition	\$800,000
Micro-shelters (100)	\$400,000
Program Building Renovation	\$3,000,000
Site Preparation & Fencing	\$1,000,000
Infrastructure Improvements	\$1,000,000
<b>Estimated</b>	<b>\$6,200,000</b>

Operational Budget is estimated to between \$400,000 and \$850,000 annually.

Expenditure Items	Budgeted
Personnel	\$100,000-\$250,000
Security	\$100,000-\$200,000
Village Supplies	\$100,000-\$200,000
Utilities	\$100,000-\$200,000
<b>Annual Estimated</b>	<b>\$400,000 - \$850,000</b>

**IMPORTANT:** Both budgets listed above are considered estimates and placeholders created to give the selection committee a sense of cost estimates and should not be considered final.